

APPENDIX AA

Complaint in Boehringer v. AHP, Civil Action No. 0:99cv601

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BOEHRINGER INGELHEIM VETMEDICA,
INC.,

Plaintiff,

v.

AMERICAN HOME PRODUCTS, INC.,

Defendant.

Civil Action No.

99-60187-LEN

COMPLAINT
AND DEMAND FOR JURY TRIAL

Plaintiff, Boehringer Ingelheim Vetmedica, Inc. ("BIV"), by its undersigned attorneys, hereby states the following cause of action for patent infringement against defendant, American Home Products, Inc. ("AHP").

THE PARTIES

1. Plaintiff, BIV, is a Delaware corporation having its principal place of business at 2621 North Belt Highway, Saint Joseph, Missouri.
2. Defendant, American Home Products, Inc. is a Delaware corporation having its principal place of business at 5 Giralda Farms, Madison, New Jersey. AHP, individually, and through its subsidiaries, has done and is doing business in the State and District of Minnesota.

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FILED APR 15 1999
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTD
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JURISDICTION AND VENUE

3. The Court has personal jurisdiction over the defendant because defendant is doing business in this district.

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue in this judicial district is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENTS IN SUIT

6. United States patent No. 5,476,778 ("the '778 patent"), entitled "Method Of Growing And Attenuating A Viral Agent Associated With Mystery Swine Disease," was duly and legally issued by the United States Patent and Trademark Office on December 19, 1995. A copy of the '778 patent is attached hereto as Exhibit A.

7. United States patent No. 5,840,563 ("the '563 patent"), entitled "Method For Growing Swine Infertility And Respiratory Syndrome Virus," was duly and legally issued by the United States Patent and Trademark Office on November 24, 1998. A copy of the '563 patent is attached hereto as Exhibit B.

8. United States patent No. 5,846,805 ("the '805 patent"), entitled "Culture of Swine Infertility And Respiratory Syndrome Virus in Simian Cells," was duly and legally issued by the United States Patent and Trademark Office on December 8, 1998. A copy of the '805 patent is attached hereto as Exhibit C.

9. The '778, '563, and '805 patents relate to methods for culturing "Swine Infertility and Respiratory Syndrome" ("SIRS") virus, and compositions containing that virus. SIRS, also known as "Porcine Reproductive and Respiratory Syndrome" ("PRRS") and "mystery swine disease," is a virally-caused swine disease which has caused heavy losses in breeding herds. SIRS causes severe reproductive disease in adult females and respiratory disease in young pigs, resulting in females giving birth mostly to dead, mummified and/or sickly piglets, with some healthy piglets that subsequently fare poorly or die.

10. The '778, '563, and '805 patents describe and claim, *inter alia*, methods of culturing SIRS virus using simian cells, including MA-104 simian kidney cells, and compositions containing the SIRS virus.

11. BIV is the owner of all rights, title, and interest in and to the '778 and '563 patents. BIV is co-owner of the '805 patent, and is exclusive licensee to all rights of third parties in that patent.

PATENT INFRINGEMENT

12. BIV repeats and realleges each of the allegations of paragraphs 1 through 11 as if completely set forth herein.

13. On information and belief, defendant AHP has been, and still is, manufacturing, offering for sale, selling, using, and/or importing into the United States vaccine(s) made by a process and employing compositions that infringe the '778, '563, and '805 patents ("the AHP vaccine(s)").

14. On information and belief, AHP has been and continues to directly infringe, actively induce, and/or contribute to the infringement of the '778, '563, and '805 patents in this judicial district and elsewhere in the United States by manufacturing, offering for sale, selling, using, and/or importing into the United States the AHP vaccine(s).

15. On information and belief, AHP's infringement of the '778, '563, and '805 patents has been and continues to be willful, wanton, deliberate, without license or excuse, and with full knowledge of the '778, '563, and '805 patents.

16. Unless enjoined by this Court, AHP's continued acts of infringement of the '778, '563, and '805 patents will cause substantial and irreparable harm to BIV.

WHEREFORE, BIV demands that judgment be entered against AHP as follows:

- a. Adjudging that AHP, pursuant to 35 U.S.C. § 271, has infringed one or more claims of the '778, '563, and '805 patents;
- b. Preliminarily and permanently enjoining AHP, its officers, directors, agents, employees, successors and assigns, and any persons acting in concert or privity with it, from engaging in any further activities that infringe the '778, '563, and '805 patents;
- c. Ordering the recall of all existing AHP products that infringe the '778, '563 and '805 patents;

- d. **Awarding BIV damages in accordance with 35 U.S.C. § 284 adequate to compensate for AHP's infringement, but in no event less than a reasonable royalty;**
- e. **Ordering an accounting to determine the proper amount of such damages;**
- f. **Increasing such damages three-fold as a result of AHP's willful, wanton, and deliberate acts of infringement, in accordance with 35 U.S.C. § 284;**
- g. **Awarding BIV its costs and disbursements in this action, including reasonable attorney's fees in accordance with 35 U.S.C. § 285; and**
- h. **Ordering such other relief that this Court deems just and proper.**

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JURY DEMAND

BIV hereby demands a trial by jury on all issues triable to a jury.

Dated: 4.15.99

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